

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1593 Land Development
SPONSOR(S): M. Davis
TIED BILLS: **IDEN./SIM. BILLS:** SB 2188

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Local Government & Veterans' Affairs</u>	_____	<u>Mitchell</u>	<u>Cutchins</u>
2) <u>Transportation & Economic Development Appropriations (Sub)</u>	_____	_____	_____
3) <u>Appropriations</u>	_____	_____	_____
4) _____	_____	_____	_____
5) _____	_____	_____	_____

SUMMARY ANALYSIS

This bill amends provisions relating county-held tax certificates and the reversion of property to the county when it has not been sold after three years. The bill also provides protection to the county for “preexisting soil or groundwater contamination” due solely to its ownership of such lands. The bill does not, however, affect the liability of any governmental entity for the results of its actions that create or exacerbate a pollution source.

This bill provides legislative findings and intent related to mixed-use, high-intensity development and directs the Department of Community Affairs to provide technical assistance to local governments, including a model ordinance, to encourage mixed-use, high-density urban infill and redevelopment projects.

The bill also makes findings related to “transfer of development rights” programs for historic buildings and requires the Department of Community Affairs to provide technical assistance to local governments, including a model ordinance, in order to promote the transfer of development rights within urban areas for high-density infill and redevelopment projects.

The bill makes findings regarding the price of homes and the cost of affordable rental housing. The bill then provides that if a local government makes a finding that there is a shortage of affordable rentals within its jurisdiction, then it may adopt an ordinance to allow accessory dwelling units in any area zoned for single-family residential use.

The bill requires an application for a building permit to construct an accessory dwelling unit, under such an ordinance, to must include an affidavit from the applicant which attests that the unit will be rented at an affordable rate to a very-low-income, low-income, or moderate-income person or persons.

The bill allows each accessory dwelling unit allowed by an accessory dwelling unit ordinance to apply towards satisfying the affordable housing component of the housing element in the comprehensive plan of the local government's comprehensive plan

The bill requires the Department of Community Affairs to evaluate and report to the Legislature on the use of accessory dwelling units by January 1, 2007.

The bill takes effect upon becoming law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. DOES THE BILL:

- | | | | |
|--------------------------------------|------------------------------|-----------------------------|---|
| 1. Reduce government? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. Lower taxes? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. Expand individual freedom? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. Increase personal responsibility? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. Empower families? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

B. EFFECT OF PROPOSED CHANGES:

Interim Project on Urban Infill and Redevelopment

The Senate Committee on Comprehensive Planning conducted an interim project related to urban infill and redevelopment.¹ The report defines urban infill and redevelopment projects:

Urban infill and redevelopment projects are those projects that use vacant or under-utilized parcels within an urban area to improve existing neighborhoods and encourage economic development. In general, as communities have continued to grow with low density development and new public facilities towards the fringe, many older urban areas have begun to decline and are now considered distressed neighborhoods.

The report explores several obstacles to infill and redevelopment in an urban area including land assemblage issues, abandoned properties, inadequate infrastructure, environmental contamination, and outdated zoning regulations. The report then provides recommendations which would promote and encourage urban infill and redevelopment.

This bill begins to implement the recommendations related to (1) tax certificates and environmental contamination, (2) a model ordinance that encourages mixed-use, high density development, and (3) a model ordinance on transfer of development rights in urban areas.

Tax Certificates and Environmental Contamination

A tax certificate is a legal document which represents unpaid delinquent real property taxes, non-ad valorem assessments, including special assessments, interest, and related costs and charges against a specific parcel of real property and is a first lien thereon, superior to all other liens.²

Subsection (6) of section 197.502, Florida Statutes, provides for bidding of county-held tax certificates on nonhomestead property and subsection (8) provides for land which has not been sold to escheats³ to the county three years from when the land was offered for public sale and for all tax certificates and liens against the property are canceled, and the tax deed title vests in the name of the county.

This bill adds clarifying language to these escheatment provisions to provide that the land escheats "free and clear." "Accrued taxes" and liens "of any nature" are also "deemed" canceled "as a matter of

¹ See Fla. S. Comm. on Comp. Planning, *Interim Project Report 2004-165* (Dec. 2003) (on file with Fla. S. Comm. on Comp. Planning).

² See Fla. Stat. § 197.102(3) (2003).

³ Escheats is the reversion of property ownership to the state. See Black's Law Dictionary 564 (7th ed. 1999).

law and of no further legal force and effect.” The bill also provides that the tax deed is an “escheatment tax deed” which vests title in the county in which the land is located.

This bill also provides protection to the county for “preexisting soil or groundwater contamination” due solely to its ownership of escheated property.⁴ Currently the county may be liable pursuant to chapters 376⁵ or 403⁶, Florida Statutes, for such contamination. The bill does not, however, affect the rights or liabilities of any past or future owners of the escheated property and does not affect the liability of any governmental entity for the results of its actions that create or exacerbate a pollution source. Also, the bill permits the county and the Department of Environmental Protection to enter into a written agreement for the performance, funding, and reimbursement of the investigative and remedial acts necessary for a property which escheats to the county.

Mixed-Use, High-Intensity Development

Part II of Chapter 163, Florida Statutes, contains the Local Government Comprehensive Planning and Land Development Regulation Act. Section 163.3177, Florida Statutes, sets forth the required and optional elements of the comprehensive plan that each local government is required to prepare. This section also “recognizes the need for innovative planning and development strategies which will address the anticipated demands of continued urbanization” and provides legislative intent that comprehensive plans offer a planning process which allows for land use efficiencies within existing urban areas and which also allows for the conversion of rural lands to other uses. There is further legislative intent for the comprehensive plans and their implementing land development regulations to provide strategies which maximize the use of existing facilities and services through redevelopment, urban infill development, and other strategies for urban revitalization.

This bill provides related legislative findings and intent related to mixed-use, high-intensity development, indicating that this type of development:

- is appropriate for urban infill and redevelopment areas since mixed-use projects accommodate a variety of uses, including residential and commercial, and usually at higher densities that promote pedestrian-friendly, sustainable communities;
- improves the quality of life for residents and businesses in urban areas; and
- benefits residents by creating a livable community with alternative modes of transportation.

In addition, the bill makes a finding that “local zoning ordinances often discourage mixed-use, high-density development in areas that are appropriate for urban infill and redevelopment.” In providing legislative intent to discourage single-use zoning in urban areas which often leads to lower-density, land-intensive development outside an urban service area, the bill directs the Department of Community Affairs to provide technical assistance to local governments, including a model ordinance, to encourage mixed-use, high-density urban infill and redevelopment projects.

Transfer of Development Rights

A program for the transfer of development rights for historic properties permits the owner of a property, in this case, a historic property, to take the development rights that are permitted for that property, usually related to the permitted density, and use those credits in an area designated for high-density development. In addition to making findings related to mixed-use, high-intensity development, this bill

⁴ See Fla. Stat. 337.27 (2003) (providing that the Department of Transportation is not liable “preexisting soil or groundwater contamination” due solely to its ownership of lands acquired through eminent domain).

⁵ See Fla. Stat. ch. 376 (2003) (relating to pollutant discharge and removal).

⁶ See Fla. Stat. ch. 403 (2003) (relating to environmental control).

also makes findings related to transfer of development rights programs for historic buildings, indicating that these programs:

- are a useful tool to preserve historic buildings and create public open spaces in urban areas; and
- allow the transfer of density credits from historic properties and public open spaces to areas designated for high-density development. The Legislature recognizes that high-density development is integral to the success of many urban infill and redevelopment projects.

Since the bill intends to encourage high-density urban infill and redevelopment while preserving historic structures and open spaces, it requires the Department of Community Affairs to provide technical assistance to local governments, including a model ordinance, in order to promote the transfer of development rights within urban areas for high-density infill and redevelopment projects.

Accessory Dwelling Units

The bill also makes findings regarding the price of homes and the cost of affordable rental housing:

- the median price of homes in this state has increased steadily over the last decade and at a greater rate of increase than the median income in many urban areas;
- the cost of rental housing has also increased steadily and the cost often exceeds an amount that is affordable to very-low-income, low-income, or moderate-income persons and has resulted in a critical shortage of affordable rentals in many urban areas in the state;
- the shortage of affordable rentals constitutes a threat to the health, safety, and welfare of the residents of the state; and
- it serves an important public purpose to encourage the permitting of accessory dwelling units in single-family residential areas in order to increase the availability of affordable rentals for very-low-income, low-income, or moderate-income persons.

The bill then defines an accessory dwelling unit as “an ancillary or secondary living unit, that has a separate kitchen, bathroom, and sleeping area, existing either within the same structure, or on the same lot, as the primary dwelling unit.” The bill also defines affordable rental as “monthly rent and utilities do not exceed 30 percent of that amount which represents the percentage of the median adjusted gross annual income for very-low-income, low-income, or moderate-income persons.” Definitions for local government, low-income persons, moderate income persons, and very-low income persons are also provided.

After providing these findings and definitions, the bill provides that if a local government makes a finding that there is a shortage of affordable rentals within its jurisdiction, then it may adopt an ordinance to allow accessory dwelling units in any area zoned for single-family residential use. The bill then requires an application for a building permit to construct an accessory dwelling unit, permitted under such an ordinance, to include an affidavit from the applicant which attests that the unit will be rented at an affordable rate to a very-low-income, low-income, or moderate-income person or persons.

The bill allows each accessory dwelling unit allowed by an accessory dwelling unit ordinance to apply towards satisfying the affordable housing component of the housing element in the comprehensive plan of the local government's comprehensive plan.

The bill requires the Department of Community Affairs to evaluate the effectiveness of using accessory dwelling units to address a local government's shortage of affordable housing and report to the Legislature by January 1, 2007. The report must specify the number of ordinances adopted by a local

government under this section and the number of accessory dwelling units that were created under these ordinances.

C. SECTION DIRECTORY:

Section 1: Amends subsection (8) of section 197.502, Florida Statutes.

Section 2: Adds new paragraphs (d) and (e) to subsection (11) of section 163.3177, Florida Statutes, and redesignates current paragraphs (d), (e), and (f) as (f), (g), and (h).

Section 3: Creates provisions of law related to accessory dwelling units.

Section 4: Provides that the bill will take effect upon becoming law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

This bill does not appear to have a fiscal impact on state government revenues.

2. Expenditures:

This bill may have a fiscal impact on state government expenditures in that it requires the Department of Community Affairs to provide technical assistance, including a model ordinance for high-density urban infill and development and for transfer of development rights within such urban areas. The bill also requires the Department of Community Affairs to evaluate the effectiveness of using accessory dwelling units to address a shortage of affordable housing and report to the Legislature.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

This bill does not appear to impact local government revenues.

2. Expenditures:

This bill does not appear to impact local government expenditures, although the liability protections on properties which escheat to the county may decrease expenditures by counties.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The only provisions of the bill which may have a direct economic impact on the private sector are those providing for accessory dwelling units as an alternative source of affordable housing.

D. FISCAL COMMENTS:

There are not additional fiscal comments.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The municipality/county mandates provision does not appear to apply to this bill as it does not directly require counties or municipalities to spend funds or take action requiring the expenditure of

funds. Thus, the bill appears exempt the bill from the provisions of section 18, article VII of the Florida Constitution.

2. Other:

There do not appear to be any constitutional issues.

B. RULE-MAKING AUTHORITY:

This bill does not seem to provide any rule-making authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

There are no drafting issues or other comments.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

There are no amendments or committee substitute changes.